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Appointments to fill vacancies in subsidiary organs and other appointments: appointment of the judges of the United Nations Dispute Tribunal

Programme budget for the biennium 2016-2017

Administration of justice at the United Nations

Administration of justice at the United Nations and activities of the Office of the Ombudsman and Mediation Services

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions considered the reports of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations and revised estimates relating to the programme budget for the biennium 2016-2017 (A/71/163), the administration of justice at the United Nations (A/71/164) and the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157). The Committee also had before it the report of the Internal Justice Council on the administration of justice at the United Nations (A/71/158) and the note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/62/Rev.1). During its consideration of the reports, the Committee met representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 21 September 2016.

2. The General Assembly, in paragraph 13 of its resolution 69/203, requested the Secretary-General to submit his comments on the recommendations contained in the report of the Interim Independent Assessment Panel on the system of administration

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of justice at the United Nations (A/71/62/Rev.1). The Secretary-General prepared his comments after holding consultations with stakeholders in the system, including staff. His report also contains proposed revised estimates relating to the implementation of some of the Panel's recommendations. The report on the administration of justice at the United Nations (A/71/164) provides statistics on the functioning of the system of administration of justice for 2015 and responses to the Assembly's requests in its resolution 70/112. The report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157) provides information on the activities of the Office for 2015.

3. The present report contains the observations and recommendations of the Advisory Committee on the above-mentioned reports. In section II, the Committee focuses on the findings and recommendations of the Interim Independent Assessment Panel and the related revised estimates relating to the programme budget for the biennium 2016-2017. Section III contains the Committee's recommendations on the report of the Secretary-General on the administration of justice, while section IV pertains to the Committee's observations on the activities of the Office of the United Nations Ombudsman and Mediation Services.

II. Findings and recommendations of the Interim Independent Assessment Panel and related revised estimates for 2016-2017

4. In its report, the Interim Independent Assessment Panel expressed the view that the system of administration of justice introduced in 2009 had made a good start and was an improvement over the previous system. Nevertheless, the Panel made 58 recommendations to further improve the system (see A/71/62/Rev.1). Overall, the Secretary-General welcomes the report of the Panel and is pleased to note the Panel's conclusion that the objectives of the justice system had been met to a very large extent. The Secretary-General agrees with a number of the recommendations and proposes resource requirements amounting to $2,502,800 relating to the implementation of the recommendations in 2017 (see A/71/163, para. 151). The revised estimates comprise $1,205,900 under post requirements (for the salaries and common staff costs relating to the establishment or regularization of 15 posts) and $1,296,900 under non-post requirements. **The Advisory Committee does not consider that any case has been made for the immediate and exceptional consideration of additional funding for the system of administration of justice outside the cycle of the normal budget process. Moreover, the Committee notes that, for the most part, the report of the Panel did not include recommendations on resources.** Specific observations on individual resource proposals are contained in paragraphs 7-19 below.

Post requirements

5. The Secretary-General proposes the establishment of six new posts in the Office of Staff Legal Assistance: two posts of Legal Officer (P-4) (one in New York and one in Nairobi), one post of Legal Assistant (General Service (Other level)) (in Geneva) and three posts of Legal Assistant (General Service (Local level)) (one in Addis Ababa, one in Beirut and one in Nairobi). The proposal is based on

recommendations 40 and 41 of the Panel.[1] As an alternative, the Secretary-General proposes that, should the General Assembly decide to regularize the voluntary supplemental funding mechanism, the funds would be used to acquire as many of the additional resources required by the Office as possible, and further suggests that fixed-term positions should be created on the current demonstrated strength of staff contributions (see A/71/163, paras. 109 and 158 (d)).[2]

6. The Secretary-General shares the view of the Panel that there is an overriding need for more resources for the Office of Staff Legal Assistance and that the current budget, even supplemented by the voluntary supplemental funding mechanism, is not sufficient to meet its needs (see ibid., para. 107, and A/71/62/Rev.1, paras. 333 and 407).

7. **The Advisory Committee recalls that, in its previous report on the administration of justice, it noted that the voluntary supplemental staff funding mechanism had achieved enough to recruit a sufficient number of staff, despite significant opt-out rates in some entities and geographic regions, and encouraged the Secretary-General to strengthen his efforts to persuade staff members not to opt out of that mechanism (see A/70/420, paras. 27 and 28). The Committee recommends continuing with the experimental phase of the voluntary staff funding mechanism. Consequently, the Committee recommends against the establishment of six new posts in the Office of Staff Legal Assistance and encourages the Secretary-General to explore options to ensure the sustainability of the supplementary staff funding mechanism with a view to making proposals in his next report on the administration of justice.**

8. **With regard to the proposal to fill the gap between P-3 and P-5 Legal Officer posts in the existing grade structure of the Office of Staff Legal Assistance through the establishment of posts at the P-4 level, the Advisory Committee underscores that such requests should be justified in terms of workload requirements, with post levels commensurate with the related responsibilities for these functions. The Committee further notes that the staff members working in the Office are covered under the Organization's mobility policy and should not therefore expect continuous service within the same office to result in a promotion. The Committee also notes that two temporary positions of Legal Officer at the P-4 level are in the process of being filled, funded by the supplementary staff funding mechanism.**

9. The Secretary-General proposes the establishment of six posts in the registries of the United Nations Dispute Tribunal — three posts of Legal Officer (P-3) (one in New York, one in Geneva and one in Nairobi), two posts of Legal Assistant

[1] Recommendation 40 reads as follows: "The United Nations budget should pay for the basic functioning of the Office of Staff Legal Assistance, but additional funding is necessary." Recommendation 41 reads as follows: "The Organization should fill the gap in the grade structure of the Office of Staff Legal Assistance by upgrading one P-3 position to P-4." See A/71/62/Rev.1, paras. 334 and 335.

[2] The voluntary contributions allowed for the temporary recruitment of two P-4 Legal Officers (one in New York and one in Nairobi) and three Legal Assistants, located in Addis Ababa, Beirut and Nairobi. The staff contributions were not sufficient to allow for the additional recruitment of one Legal Assistant in Geneva (see A/70/420, para. 26). Updated information on the monthly opt-out rates and staff contributions is contained in annex III to document A/71/164.

(General Service (Other level)) (one in New York and one in Geneva) and one post of Legal Assistant (General Service (Local level)) (in Nairobi) — in lieu of the temporary staff currently supporting the three ad litem judges. The proposed "regularization" of the temporary positions is linked to the Panel's recommendation on the three ad litem judges of the Tribunal. **Given that the Advisory Committee recommends against the establishment of three new permanent judges in lieu of the ad litem judges in paragraph 15 below, it recommends against establishing the six posts in the registries of the Dispute Tribunal and instead recommends extending the existing temporary positions for the period from 1 January to 31 December 2017.**

10. The revised estimates also contain a proposal, in line with recommendation 37 of the Panel, to establish two new posts in the Management Evaluation Unit — those of Legal Officer (P-3) and Legal Assistant (General Service (Other level)) — and, on the basis of recommendation 53, a post of Legal Officer (P-3) in the Registry of the United Nations Appeals Tribunal.[3]

11. **The Advisory Committee recommends against the establishment of the posts of Legal Officer (P-3) and Legal Assistant (General Service (Other level)) in the Management Evaluation Unit and the post of Legal Officer (P-3) in the Registry of the Appeals Tribunal, in the absence of any compelling argument to consider additional funding for the biennium 2016-2017.**

12. **Overall, the Advisory Committee recommends against the proposal of the Secretary-General to establish 15 new posts for the administration of justice.**

Non-post requirements

13. The Secretary-General requests additional compensation for judges amounting to $796,900 to cover the addition of three permanent full-time judges to replace the ad litem judges on the basis of recommendation 47 of the Panel, in addition to the payment of $600 for each interlocutory motion adjudicated by a judge of the Appeals Tribunal and the payment of a stipend to the President of the Tribunal in the amount of $1,500 per month on the basis of recommendation 55 of the Panel.[4]

14. The Secretary-General agrees with the Panel's recommendation to replace the three ad litem judges with three permanent judges for the Dispute Tribunal, stating that the caseload requires two full-time judges in each of the three duty stations and that judicial independence is undermined by the repeated extensions of the ad litem judges (see A/71/163, paras. 126-129). Upon enquiry, the Advisory Committee was

[3] Recommendation 37 reads as follows: "The Administration should ensure that Management Evaluation Unit functions can be carried out in compliance with statutory provisions and timelines." Recommendation 53 reads as follows: "The Appeals Tribunal Registry should be enlarged with one additional P-3 legal officer." See A/71/62/Rev.1, paras. 319 and 379.

[4] Recommendation 47 reads as follows: "Three additional permanent judges should be appointed to replace the ad litem judges." Recommendation 55 reads as follows: "To guarantee proper processing of urgent motions, the Appeals Tribunal should either give more power to the President to deal with such matters and to compensate him or her accordingly, probably on a half-time basis, or authorize the Registrar, in coordination with the President, to assign a case at a very early stage to a panel of the Tribunal and identify the presiding and reporting judges, with the latter then being the duty judge for all urgent matters in the case." See A/71/62/Rev.1, paras. 376 and 380.

informed that the implementation of that change would have no resource implications because the extension of the ad litem judges' mandate in 2017 would result in equivalent costs.

15. **The Advisory Committee considers that the caseload of the Dispute Tribunal has yet to stabilize and that future caseload trends are difficult to predict. For example, while the overall number of applications increased between 2014 and 2015 from 411 to 438, the Dispute Tribunal disposed of a higher number of applications (from 320 to 480), leaving fewer applications at the end of the year — from 317 to 275 (see A/71/164, table 3). In addition, the Committee considers that the ongoing management improvements could ultimately reduce recourse to litigation. It also notes that the number of judgments declined between 2014 and 2015 from 148 to 126 (see ibid., table 5) and that the numbers of applications and judgments differ greatly between the three locations of the Dispute Tribunal (see ibid., tables 4 and 6). In the light of those observations, the Committee is of the view that the possibility of reducing the number of judges in the future or of redeploying them between duty stations should be preserved. Accordingly, the Committee recommends against the replacement of the three ad litem judges with three permanent judges for the Dispute Tribunal and recommends the extension of the three ad litem judge positions for 12 months from 1 January to 31 December 2017 as also proposed by the Secretary-General as an alternative.**

16. Regarding the work of the judiciary, the Advisory Committee was informed, upon enquiry, that the Secretary-General was not in a position to set numeric output measurements for judges because that would be contrary to judicial independence. The Committee recalls, however, that, according to paragraph 7 (b) of the code of conduct for the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal contained in resolution 66/106 of the General Assembly, judges must give judgment or rulings in a case promptly and no later than three months from the end of the hearing, the close of the pleadings or the end of the session. The Committee is of the view that the Secretary-General should provide data on this matter to the Assembly.

17. The Secretary-General also proposes to compensate a judge of the Appeals Tribunal for each interlocutory motion that he or she adjudicates ($600 per motion) and to approve a monthly stipend of $1,500 for the President of the Tribunal. **The Advisory Committee is of the view that this matter requires further justification and analysis and should be reviewed, if justified, in the context of the budget proposal for the next biennium. The Committee therefore recommends against approval of the related non-post resources proposal in this regard.**

18. The revised estimates also include a request amounting to $70,000 for consultancy for professional legal editors to prepare searchable summaries of the Tribunals' judgments. **The Committee is not convinced that this request is justified, given that the Secretary-General also indicates that work to enhance the jurisprudential search engine was under way and that a modality for additional search capabilities was to be completed by 31 July 2016**

(see A/71/163, para. 34).[5] In addition, the Committee believes that work of this nature should be undertaken internally, without recourse to external consultants.

19. The revised estimates also contain a request for additional travel resources in the amount of $75,000 to hold hearings of the Dispute Tribunal outside New York, Geneva or Nairobi. The request is based on the Panel's recommendation to increase the mobility of the Tribunal.[6] The Advisory Committee is not convinced that transparency and access to justice require the Tribunal to hold hearings at duty stations other than its three current locations. In the view of the Committee, this matter requires further analysis and should be considered in the context of the next budget cycle, if justified. **Consequently, the Advisory Committee recommends against the approval of the additional travel resources.**

Contribution of the funds and programmes to the system of administration of justice

20. During its review of the reports of the Secretary-General, the Advisory Committee was informed, upon enquiry, that the funds and programmes reimbursed their share of the costs relating to the administration of justice on the basis of the headcount of each of the participating entities. In 2015, 38 per cent of the applications filed with the Dispute Tribunal were from staff in the funds and programmes (see A/71/164, fig. I). The Committee was also informed that the additional funding request of $2.5 million represented the totality of the additional requirements arising from the Panel's recommendations. If the General Assembly were to approve those resources, the funds and programmes would subsequently be billed for their shares on the established cost-sharing basis.

21. The actions to be taken by the General Assembly are listed in paragraph 158 of the report (A/71/163). **The Advisory Committee recommends against the proposals contained in paragraphs 158 (b), (c), (e), (f), (h), (k), (l), (m), (n) and (o), and in favor of the proposals contained in paragraphs 158 (g) and (i) relating to the extension of the ad litem judges and their support staff. The matters contained in paragraphs 158 (a) and (j) are legal matters not within the purview of the Committee and are for the General Assembly to determine.**

22. The Advisory Committee notes that, in paragraph 10 of its resolution 69/203, the General Assembly reaffirmed that the interim independent assessment should examine the system of administration of justice in all its aspects, with particular attention to the formal system and its relation with the informal system. **The Advisory Committee is of the view that more detailed analysis and recommendations aimed at making better use of the informal system in order to avoid unnecessary litigation are still needed. The Committee stresses the continued importance of the informal part of the system of administration of**

[5] Paragraph 34 was written in response to the Panel's recommendation 12, which reads as follows: "The Office of Administration of Justice should further improve the search engine of the Tribunals' jurisprudence." See A/71/62/Rev.1, para. 199.

[6] Recommendation 17 reads as follows: "The mobility of the Dispute Tribunal should be increased, in accordance with article 5 of its statute, thus enabling the Tribunal to reach duty stations in the field and carry out hearings in the appropriate conditions." See A/71/62/Rev.1, paras. 223 and 372.

justice in taking early action to prevent or limit cases of litigation and recalls its previous observations on this matter (see also para. 36 below).

III. Administration of justice at the United Nations

23. The report of the Secretary-General on the administration of justice at the United Nations (A/71/164) shows an increase in the number of applications to the various parts of the system between 2014 and 2015, with the exception of the Management Evaluation Unit, where the number of requests fell from 1,541 in 2014 to 873 in 2015. More than 75 per cent of the requests for management evaluation in 2015 were related to retrenchment exercises in the field, including clustered requests from staff of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo and the African Union-United Nations Hybrid Operation in Darfur (see A/71/164, para. 5).

24. In 2015, the Office of Staff Legal Assistance received 1,502 requests for legal assistance, compared with 1,180 requests in 2014, and acted as counsel before the Dispute Tribunal in 415 cases, compared with 102 cases in 2014. The latter increase was due to a group of 245 applications from past and present staff from the International Tribunal for the Former Yugoslavia relating to conversions to permanent appointment and a group of 60 applications from staff from the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo relating to the non-renewal of fixed-term appointments (see ibid., para. 7).

25. The Dispute Tribunal received 438 applications in 2015, compared with 411 in 2014. It issued 126 judgments (48 in Geneva, 40 in Nairobi and 38 in New York) in which it disposed of 327 applications (including 8 judgments in which it disposed of 209 applications), and disposed of a further 153 applications by order. The number of pending applications at the end of the year fell from 317 in 2014 to 275 in 2015 (see ibid., para. 8 and table 4).

26. In 2015, the Appeals Tribunal received 191 appeals, compared with 137 in 2014. The increase was due largely to a group of periodic salary survey-related applications. The total number of judgments increased from 100 in 2014 to 114 in 2015, but the number of judgments in which the Secretary-General was a party remained stable (80 in 2015, compared with 82 in 2014). The number of interlocutory motions also remained stable: 81 in 2015 compared with 84 in 2014. Nevertheless, the number of pending appeals at the end of the year increased from 101 in 2014 to 147 in 2015 (see ibid., para. 10 and tables 8 and 9).

27. The report of the Secretary-General contains responses to questions raised by the General Assembly in its resolution 70/112, including information on the revised terms of reference and guidelines for the Office of the United Nations Ombudsman and Mediation Services (ST/SGB/2016/7), the accountability of managers, the effectiveness of the Management Evaluation Unit and implications of amendments to the statutes of the Tribunals (see A/71/164, paras. 114-159).

28. Annex II to the report provides information on the progress made in the implementation of recommendations to address systemic and cross-cutting issues contained in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services. These issues (abusive behaviour and incivility

in the workplace, the imperative to strengthen investigations, the problems of staff serving in dangerous duty stations and the lack of effective communications with staff) were listed in the previous report (A/70/151). Consequently, the Advisory Committee notes that there is a lag of one year between the identification of the issues and the issuance of information on the measures taken to resolve them. **In order to improve the responsiveness and transparency of the system, the Advisory Committee considers that the annual report of the Secretary-General on the administration of justice could provide comments on the recommendations on systemic issues contained in the report on the activities of the United Nations Ombudsman and Mediation Services for the same session. The Committee therefore recommends that the General Assembly request the Secretary-General to include such information in the next annual report on the administration of justice.**

29. The actions to be taken by the General Assembly are listed in paragraphs 163 and 164 of the report (A/71/164). In paragraph 164 (a), the Secretary-General requests the Assembly to take note of various documents and, in paragraph 164 (b), to approve the proposed single code of conduct for all legal representatives. **In the case of paragraph 164 (b), the Advisory Committee is of the view that this is a legal matter not within the purview of the Committee and is for the General Assembly to determine.**

IV. Activities of the Office of the United Nations Ombudsman and Mediation Services

30. In the report on the activities of the Office of the United Nations Ombudsman and Mediation Services, it is indicated that the Office opened 2,524 cases in 2015 (1,928 from the Secretariat, 457 from the funds and programmes and 139 from the Office of the United Nations High Commissioner for Refugees), representing an increase of 13 per cent compared with 2014 (A/71/157, para. 13).

31. Cases originating from field missions represented 45 per cent of the total number of cases for the entire Office and 57 per cent of the Secretariat cases (see ibid., fig. IV). The main types of issues under consideration were related to jobs and careers (24 per cent), evaluative relationships (24 per cent) and compensation and benefits (13 per cent) (see ibid., fig. III).

32. The utilization rate (the relationship between the overall number of staff and the number of cases received) was 4.4 per cent in the Secretariat in 2015, an increase of 0.4 per cent from the previous year. The rate was highest among staff at the D-1 level and above, at 11 per cent, and lowest in the General Service category, at 1.6 per cent (see ibid., para. 18).

33. A total of 168 cases involved non-staff personnel in 2015, compared with 145 cases in 2014. The Mediation Service opened 78 cases in 2015, compared with 64 in 2014 (see ibid., paras. 21 and 23-28).

34. In the report, the Office highlights systemic issues arising from its consideration of different cases, including the situation of staff serving in dangerous duty stations, the consequences of partial medical clearances, administrative delays,

the fear of reprisals, the need to strengthen investigations, gender parity and good practices in mission downsizing (see ibid., paras. 55-93). The Advisory Committee intends to address the issue of partial medical clearance in its forthcoming report on human resources matters.

35. Regarding matters relating to gender parity, the Advisory Committee was informed, upon enquiry, that, owing to budget constraints, many departments no longer requested general temporary assistance resources to cover replacement costs arising from extended absences of staff on paid leave or staff on maternity leave. The immediate burden of extended absences thus fell on the respective manager and the other team members who must absorb the additional work normally undertaken by the absent colleague. In the view of the Ombudsman, the lack of funds for maternity leave replacements can be a disincentive to hiring women (see ibid., para. 87). **The Advisory Committee intends to keep this matter under review. In this connection, the Committee recalls its concern expressed in the context of its first report on the proposed programme budget for the biennium 2016-2017, namely that the Secretariat had not established a methodology to calculate the estimated cost of sick and maternity leave. The Committee also expressed its belief that a more centralized management of this budget line, taking into account Organization-wide past patterns, could lead to more accurate budgeting in the future (see A/70/7, para. 103). The Committee's observations were endorsed by the General Assembly.**

36. **The Advisory Committee stresses the continued importance of the informal part of the system of administration of justice in taking early action to prevent or limit cases of litigation. The Committee recalls its previous observations that informal resolution is an important part of the system and continues to encourage efforts to increase its use when appropriate.**